



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 21, 2003

Ms. Elaine S. Hengen  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9th Floor  
El Paso, Texas 79901-1196

OR2003-7521

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 189699.

The El Paso Police Department (the "Department") received a request for a copy of the "S.O.P. for SWAT[.]"<sup>1</sup> You assert the highlighted portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code. We reviewed the information you submitted and considered the exception you claim.

Section 552.108, known as the "law enforcement exception," states the following, in relevant part:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

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<sup>1</sup> You state that the Department has received "several" requests for information from this requestor; however, we note that you have only requested an attorney general decision for one of these requests. You advise us that "[t]he City has no records that are responsive to two of the requests [for information.]" We note that the Act does not require a governmental body to disclose information that does not exist at the time a request is received or to create new information in response to a request. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(1). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no writ). This office has stated that under the statutory predecessor to section 552.108(b), a governmental body may withhold information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 252 (1980) (investigative techniques and procedures used in law enforcement protected by Gov't Code § 552.108), 143 (1976) (specific operations or specialized equipment directly related to investigation or detection of crime). Also, this office has concluded that section 552.108 excepts from public disclosure information that relates to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision No. 531 (1989) (holding that Gov't Code § 552.108 excepts detailed guidelines regarding a police department's use of force policy).

However, in demonstrating the applicability of subsection 552.108(b)(1), a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990). To prevail on its claim that subsection 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Open Records Decision No. 409 at 2 (1984). Furthermore, a governmental body may not withhold commonly known policies and techniques under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common-law rules, and constitutional limitations on use of force are not protected under Gov't Code § 552.108), 252 at 3 (1980) (governmental body did not meet its burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. *Id.*

After reviewing your arguments and the documents at issue, we conclude that you have established the applicability of subsection 552.108(b)(1) to most of the submitted information that you seek to withhold. However, we find you have not sufficiently demonstrated how release of a small portion of the information you have highlighted would interfere with the Department's law enforcement efforts. *See* Open Records Decision No. 216 at 4 (1970) (commonly known law enforcement techniques not protected under predecessor to Gov't Code § 552.108). Accordingly, we conclude that, with the exception of the information we have marked, the Department may withhold the information you have highlighted under subsection 552.108(b)(1) of the Government Code. The Department must

release the remainder of the submitted information, including the portion we have marked, to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).


If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this

ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Christen Sorrell". The signature is fluid and cursive, with the first name "Christen" written in a larger, more prominent script than the last name "Sorrell".

Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 189699

Enc: Submitted documents

c: Mr. Frank Ramirez  
4947 Vulcan  
El Paso, Texas 79904  
(w/o enclosures)